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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14  
15 UNITED STATES OF AMERICA, ) CASE NO. CR 14-00175 TEH  
16 Plaintiff, )  
17 v. ) UNITED STATES' OPPOSITION TO  
18 PACIFIC GAS AND ELECTRIC COMPANY, ) DEFENDANT'S MOTION TO EXCLUDE  
19 Defendant. ) RUPTURE EVIDENCE, OR, ALTERNATIVELY,  
 ) TO SEVER COUNT ONE  
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21 In this case about willful violation of federal pipeline safety regulations and obstruction of the  
22 federal investigation following an explosion of one of its natural gas transmission pipelines in San  
23 Bruno, PG&E makes a last ditch effort to keep the jury from hearing about the explosion. The Court  
24 denied PG&E's motion to strike the explosion from the indictment, finding it relevant. Dkt. 43. Then  
25 the Court denied PG&E's motion to exclude it from the trial, balancing the probative value against the  
26 risk of unfair prejudice to conclude that the government could offer (1) evidence that there was a  
27 "deadly explosion" and (2) a map depicting the plot lines of damaged and destroyed homes, without

28 U.S. OPP. TO DEFT'S MOT. TO EXCLUDE RUPTURE EVIDENCE  
OR, ALTERNATIVELY, TO SEVER COUNT ONE  
CR 14-00175 TEH

1 differentiating between the two. Dkt. 460 at 10-11. The government intends to comply with this order.

2 **A. The Witnesses**

3 The United States intends to call Scott Waldvogel. Waldvogel will testify that he is a firefighter  
 4 in the town of San Bruno; that he responded to the Crestmoor neighborhood of San Bruno on September  
 5 9, 2010; that there had been a deadly explosion; and that the map proffered by the government (and  
 6 previously-approved by this Court) fairly and accurately reflects the properties that were damaged as a  
 7 result of the explosion. That's it.

8 The Court's Order on motions in limine disallowed the government's previously-proffered  
 9 testimony from Waldvogel, regarding the fire itself. Accordingly, in its Amended Witness List, the  
 10 government identified an alternate to Waldvogel – San Bruno Mayor James Ruane – to provide the  
 11 above testimony. Because the Court confirmed last week that its order pertained to the substance of  
 12 proffered testimony, and was not excluding Waldvogel from testifying as to areas that the Court  
 13 permitted, the government intends to call Waldvogel and not Mayor Ruane.

14 Miranda Martin is a records custodian for the San Mateo County Assessor's Office. She  
 15 certified the plot maps of the Crestmoor neighborhood. She is listed as a witness in case PG&E fights  
 16 the underlying map, despite its certification of authenticity. She has no personal knowledge of, and thus  
 17 no ability to authenticate, the map depicting damaged and destroyed homes.

18 The government should be permitted to use its preferred witness to prove the facts that this Court  
 19 held admissible. The Court should deny PG&E's motion to exclude Waldvogel. If Waldvogel is  
 20 excluded, the Court should allow the government to call Mayor Ruane.

21 **B. The Map**

22 The Court has held that the map is admissible. PG&E does not dispute its accuracy. Dkt. 640 at  
 23 2:25-26. The government requests permission to use it in its Opening Statement.

24 **C. Severance**

25 The Court should deny PG&E's motion to sever Count One. Counts are properly joined if the  
 26 offenses "are of the same or similar character, or are based on the same act or transaction, or are  
 27 connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8(a). A trial court's

1 discretion not to sever counts will not be disturbed unless “a joint trial was so manifestly prejudicial as  
2 to require the trial judge to exercise his discretion in but one way, by ordering a separate trial.” *United*  
3 *States v. Mohsen*, 587 F.3d 1028, 1031 (9th Cir. 2009); *see also United States v. Lewis*, 787 F.2d 1318,  
4 1321 (9th Cir. 1986) (“The prejudice must have been of such magnitude that the defendant’s right to a  
5 fair trial was abridged.”). The risks of unfair prejudice have been resolved by this Court’s extremely  
6 thorough and stringent rulings on defendant’s motions in limine.

7 Moreover, for the reasons set forth in this Court’s prior orders, the explosion is relevant and  
8 admissible as to all of the Pipeline Safety Act counts, as well as the obstruction count. Judicial economy  
9 strongly favors joinder. *See United States v. Lopez*, 477 F.3d 1110, 1116 (9th Cir. 2007) (“concerns of  
10 judicial economy strongly supported the denial of the motion to sever in this case”).

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12 DATED: June 13, 2016

Respectfully submitted,

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